

OOI POO SENG

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v.

COLLECTOR OF LAND REVENUE, KEDAH

HIGH COURT MALAYA, ALOR SETAR
TUAN MOHD. HISHAMUDIN BIN MOHD. YUNUS JC
[LAND REFERENCE NO. 15-49/86]
7 SEPTEMBER 1994

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LAND LAW: *Acquisition of rubber land for agricultural use - Compensation awarded by Collector of Land Revenue - Applicant dissatisfied with amount of compensation - Reference to Court for amount to be increased - Burden of proof - Method of adducing evidence in land reference cases - Practice Direction No. 11 of 1987.*

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The applicant was the owner of a piece of land in the Mukim of Keplu, Kodiang which was acquired by the State Authority on 13 April 1978 under the Land Acquisition Act 1960. Being dissatisfied with the amount of compensation paid to him by the Collector, the applicant applied by way of reference pursuant to s. 38 of the Land Acquisition Act 1960 for the award of RM3,500 per relong to be increased to RM11,969 per relong. Subsequently, the relevant valuation reports were filed and served by both parties.

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The issue was whether the applicant had adduced sufficient evidence to show that the award was inadequate.

Held:

[1] In a land reference case, it is incumbent for the applicant landowner to adduce sufficient evidence to show *prima facie* that the award was inadequate. The standard of proof is like in any civil case; on a balance of probabilities. If he fails to do so, he will fail in his application. On the other hand, if the applicant succeeds in making out a *prima facie* case, then the law places on the acquiring authority an evidential burden to rebut the *prima facie* case, that is to say, the Collector must adduce evidence to justify its award.

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[2] The method of adducing evidence is different from that of the normal civil trials. It is governed by Practice Direction No. 11 of 1987 which requires each of the parties to file in Court and to serve on the other party within the time specified a copy of his or its valuation report. The Practice Direction provides, *inter alia*; that "...The applicant valuer's report **alone** must establish a *prima facie* case for the applicant." The Practice Direction also gives the parties the right to adduce further evidence by way of affidavits. No oral evidence or any other documentary evidence is allowed to be adduced at the trial, except that a party may cross-examine the other party's valuer or deponent, subject to the other party's right to re-examine.

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[3] After considering the evidence and the written submissions of the parties and the assessors, the Court was not satisfied that the applicant had succeeded in making a *prima facie* case on the basis that; firstly, although the date of acquisition was 13 April 1978, which was also the material date of valuation, the report failed to state the date of inspection and the valuation report was only prepared on 9 July 1981, more than three years after the material date. Secondly, having adopted the comparative approach, the information in the valuation report was shallow and superficial. There were only two comparables relied upon and both were challenged by the respondent. Thirdly, the description of the second comparable in the report was equally if not more sketch and fourthly, based on the two comparables, the

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- a* applicant's valuer arrived at the value of RM11,969 per relong for the land but he did so without actually explaining how he arrived at such a figure.

[Application dismissed with costs]

Cases referred to:

Collector of Land Revenue v. Alagappa Chettiar [1971] 1 MLJ 43 (*refd*)

- b* *Hoe Guan Investment v. Collector of Land Revenue, Batu Pahat* [1978] 2 MLJ 115 (*refd*)

Legislation referred to:

Land Acquisition Act 1960, s. 38

National Land Code, s. 214 (1)(b)

Other sources referred to:

Practice Direction No. 11 of 1987

- c* *For the applicant - Rohana bt. Ariffin; M/s. Jeyadeva & Kamal*
For the respondent - Abdul Razak bin Musa; Senior Federal Counsel

JUDGMENT

Mohd. Hishamudin bin Mohd. Yunus JC:

- d* The applicant was the owner of a piece of land known as Lot 996 MG 184 Mukim Keplu, Kodiang, Daerah Kubang Pasu, which was acquired by the State Authority under the Land Acquisition Act 1960 on 13 April 1978 for the use as a site for a school. The area of Lot 996 was about 11.3 relongs while the portion acquired was about 8.4 relongs. The land was located about three miles from the town of Kodiang and was cultivated with rubber. The land was zoned for agriculture use. The compensation awarded by the Collector was RM3,500 per relong.
- e* The applicant was dissatisfied with the amount of compensation paid to him and he applied to this Court by way of a reference under s. 38 of the Land Acquisition Act 1960 for the award of the Collector to be increased. In his valuation report, the applicant claimed RM11,969 per relong.

- f* In a land reference case, the burden of proving that the compensation is inadequate lies on the applicant landowner. It is not for the acquiring authority to satisfy the Court that the compensation is adequate. In *Collector of Land Revenue v. Alagappa Chettiar* [1971] 1 MLJ 43, the Privy Council held:

- g* Although upon referring an objection to the High Court for its determination the Collector is required to state the grounds on which the amount of compensation was determined, the reference to the High Court was not in the nature of an appeal from the Collector's award. It is in the nature of an original hearing in which the applicant is the plaintiff and the Collector the defendant. The onus lies upon the applicant to satisfy the Court by evidence that the amount of compensation awarded is inadequate; and the Collector is entitled to call evidence in support of the amount awarded. His evidence is not confined to supporting the award upon the grounds stated in the notice of reference. He may amplify them or justify the amount awarded on other grounds. The Judge, with the assistance of the advice proffered to him by the assessors, makes his own estimate of the amount of compensation upon the evidence adduced before him; but if at the conclusion of the evidence he is not satisfied that the amount awarded by the Collector is inadequate, the award must be upheld and the application dismissed.
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In *Hoe Guan Investment v. Collector of Land Revenue, Batu Pahat* [1978] 2 MLJ 115 Ajaib Singh J (as he then was) said (at p. 117):

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In a reference to the Court under s. 38(5) of the Land Acquisition Act 1960 it is for the applicant who objects to the award on the ground of inadequacy to show *prima facie* that such an award is inadequate and thereupon it is for the Collector of Land Revenue to support his award basing on such evidence as he may have to offer. Authority for this proposition can be found in the case of *Chuah Say Hai & Ors. v. Collector of Land Revenue, Kuala Lumpur* [(1967) 2 MLJ 99, 100] wherein Gill J (as he then was) quoted the following passage of Broomfield J in the case of *Assistant Development Officer, Bombay v. Tayaballi Allibhoy Bohori* [AIR 1933 Bom. 361, 364]:

The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing *prima facie* that the award is inadequate, then Government must support the award by producing evidence.

On the basis of the above authorities, it is incumbent for the applicant in the instant case to adduce sufficient evidence to show at least *prima facie* that the award is inadequate. The standard of proof is like in any civil case; on a balance of probabilities. If he fails to do so, he will fail in his application. There is then no necessity for the Collector to adduce evidence to justify the amount awarded. On the other hand, if he succeeds in making out a *prima facie* case, then the law places on the acquiring authority an evidential burden (as opposed to a legal burden) to rebut the *prima facie* case, that is to say, the Collector must adduce evidence to justify its award.

In our system, as far as the trials of land reference cases are concerned, the method of adducing evidence is different from that of the normal civil trials. It is governed by the **Practice Direction** No. 11 of 1987 [(1988) 2 MLJ ii] which requires each of the parties to file in Court and to serve on the other party well before the trial and within the time specified a copy of his or its valuation report (which is normally prepared by a qualified valuer). Paragraph 1(a) of the **Practice Direction** provides, *inter alia*:

... The applicant valuer's report **alone** must establish a *prima facie* case for the applicant.
[Emphasis is mine.]

The **Practice Direction** also gives the parties the right to adduce further evidence by way of affidavits (see paragraph 1(c)). No oral evidence or any other documentary evidence is allowed to be adduced at the trial, except that a party may cross-examine the other party's valuer or deponent, subject to the other party's right to re-examine.

In the present case, both parties had duly filed and served their valuation report. At the commencement of the trial, however, the applicant applied to adduce, through his valuer, documentary evidence pertaining to the transactions of his comparables. The application was objected to by the learned Senior Federal Counsel. I upheld the objection since such a move was contrary to the **Practice Direction**. Paragraph 2 stipulates:

2. No report, document or affidavit that are not in compliance with the above rules shall be allowed to be admitted.

Moreover, the applicant had more than ample time to file and to serve the documents in question.

It is observed that the learned Counsel for the applicant, in filing her written submission, has also included together with the submission certain documents pertaining to land transactions of comparables, which I had already disallowed earlier at the commencement of the trial. What learned Counsel had done was highly irregular and improper and in defiance of the **Practice Direction**; and I have directed the assessors to ignore those documents.

a At the conclusion of the trial, after considering the evidence and the written submissions of both parties, and after considering the advice of the assessors, I was not satisfied that the applicant had succeeded in making a *prima facie* case. My reasons are as follows.

b First, although the date of acquisition was 13 April 1978 and therefore the material date of valuation was this date, yet I noted with dismay that the report did not state the date of the inspection, nor was the applicant's valuer able to say, when cross-examined by the learned Senior Federal Counsel, as to when the subject land was inspected; he was only able to say that he inspected the land in question in 1981; and I noted too that his valuation report was only prepared on 9 July 1981, that is to say, more than three years after the material date!

c Secondly, having adopted the comparative approach, the information given in the valuation report on the comparables were shallow and superficial. There were only two comparables relied upon, and both were challenged by the respondent. The first comparable was presented as follows:

8.1 Surat Akuan 230/4.5.59, Mukim Kepelu

This property has an area of 3 relongs 224 jembas of which a portion (2/14 share) was transferred on 29 December 1976 for RM3,500 (or RM7,075 per relong).

d The property is a triangularly shaped piece of land located further down the Kodiang-Changlun road about 1/2 mile southeast of scheduled land. The transacted portion is todate vacant and unoccupied.

The land is presently under Malay ownership and hence sales [are] restricted to Malays only since it falls under Malay Reservation.

e Such an information was clearly inadequate and to my mind did not constitute sufficient evidence of a sale. The name of the buyer and purchaser were not stated. It was also not stated how much was the land transacted assessed for the purpose of stamp duty. There were no details regarding the nature and the status of the land. For example, what was the category of land use (for example, agricultural, residential or commercial)? Was it a freehold or a leasehold? Was there any restriction as to its disposal (besides being a Malay Reservation)? Was it situated within or outside a local authority area? What were the public amenities that it enjoyed? Was there any road access? Was the land flat or hilly or low lying?

f Even supposing that the alleged transaction did take place, there was yet another reason why the Court could not accept paragraph 8.1 of the report as evidence of a sale. I observed that there was some peculiarity in the transaction which the valuer was not able to explain satisfactorily during cross-examination and which in any case would appear to be contrary to s. 214 (1)(b) of the National Land Code. This provision states:

214. What may be transferred, and restrictions on exercise of powers.

(1) Subject to sub-section (2), the following shall be capable of transfer under this Act-

(a) ...

(b) the whole, but not a part only, of any undivided share in alienated land;

h On the peculiarity of the transaction, it is to be noted that the applicant's valuer had this to say when cross-examined by the learned Senior Federal Counsel:

Q [by Senior Federal Counsel]: Surat akuan 230/4.5.59 ialah untuk menjual semua bahagian 6/14 dan bukan 2/14?

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A [by applicant's valuer]: Do not agree. This original owner had 6/14. When she transferred the portion 2/14 to a purchaser, then the 4/14 would be reverted back to herself. She would be one of the two transferees. According to the practice, the owner would transfer 2/14 to the purchaser. At the same time she would transfer 4/14 to herself. At the end of the day the title would show that she had 4/14. I do not know the reason for such a procedure.

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From the above evidence of the valuer (supposing the Court were to accept his evidence), it would appear that the transaction involved an undivided share of 6/14 and that what was transacted was not the whole of the undivided share of 6/14 but a part only, that is to say, the share of 2/14. But the above provision of the National Land Code cited only permits transaction of the whole undivided share, not just a part. To my mind, this Court should not accept as evidence any comparable involving a transaction which is contrary to the National Land Code.

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Thirdly, the description of the second comparable in the report was equally if not more sketchy. Paragraph 8.2 of the report reads:

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8.2 Lots 1329 & 1330, Mukim Keplu

This property was sold by agreement dated 9 June 1980 for a sum of RM302,066 (or RM20,000 per relong over an area of 15 relongs 50 jembas). The ownership had been transferred to the purchaser. When was the ownership transferred. This lot lies directly opposite scheduled land across the main road. It is also cultivated with mature rubber trees.

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Again here the report did not state who were the vendor and the purchaser, or when was the land transferred (the date '19 June 1980' being merely the date of the agreement). It did not say how much was stamp duty assessed for the transaction? Just as in the case of the first comparable, here too there was a glaring absence of the relevant details pertaining to the status and nature of the land. I do not think I need to repeat them. Now, how were adjustments made in the absence of such relevant facts? Yet ironically paragraph 9 of the report - and I will touch on this paragraph next - speaks of adjustments and the relevant factors to be taken into account! In my judgment, the above four sentence description of the sale in paragraph 8.2 could not constitute sufficient or *prima facie* evidence of a comparable sale.

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Fourthly, basing on the above two comparables, the applicants valuer arrived at the value of RM11,969 per relong for the scheduled land, but it appears to me that he did so without actually explaining how he arrived at such a figure. Paragraphs 9 and 10 of the report briefly state as follows:

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9.0 Consideration of Value

Of the evidence cited above, both the lots are very suitable as comparable in terms of location and use (planted with rubber). However, adjustments must be made to allow for dissimilarities in time, size, shape, terrain, restriction in interest (e.g. Malay Reservation) plantings, and other relevant factors.

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10.0 Conclusion

After careful consideration of all the factors mentioned above we assess the fair market value of Lot 966, Mukim Keplu, as at 13 April 1978 to be RM101,000 [RM11,969 per relong].

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Surely, this is merely lip service. For, as can be seen from the above paragraphs, and bearing in mind that the first comparable was (allegedly) transacted in December 1976 at RM7,075 per relong and the second comparable was (allegedly) sold in June 1980 at RM20,000 per relong, as to how the adjustments were made and as to how the value of RM11,969 per relong was arrived at, all this was conveniently glossed over in the report.

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a On the whole - and I am sad that I am impelled to make this remark - I found the applicant's valuation report a rather superficially and poorly prepared document, devoid of essential details and lacking in elementary analysis.

The application was dismissed with cost. The applicant was also ordered to pay the fee of the assessors at the rate of RM100 per day per assessor.

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